

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011010139

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT; ORDER DENYING  
REQUEST TO DENY EXPEDITED  
HEARING; ORDER GRANTING  
MOTION TO DISMISS CLAIMS  
BARRED BY STATUTE OF  
LIMITATIONS

On January 6, 2011 Student filed a Due Process Hearing Request and Request for Expedited Hearing<sup>1</sup> (complaint) naming Norwalk-La Mirada Unified School District (District). The complaint was amended pursuant to an order issued by the Office of Administrative Hearings (OAH) on January 12, 2011 (amended complaint)

On January 21, 2011, District timely filed a Notice of Insufficiency (NOI) as to the amended complaint. District also included a Motion to Deny Request for Expedited Hearing and a Motion to Dismiss Claims Barred by the Statute of Limitations. District contends that Student has failed to establish the basis for an expedited hearing and Student may not raise claims for relief more than two years from the date of the filing and Student has made claims from June 2008 to the present. Student has not filed a response to the motion.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>2</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.<sup>3</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>4</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

In general a child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided under the IDEA if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (20 U.S.C. § 1415(k)(5)(B)(i)(ii)(iii).)

A request for a due process hearing “shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.” (Ed. Code, § 56505, subd. (l)(1).) This time limitation does not apply to a parent if the parent was prevented from requesting the due process hearing due to either:

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<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

<sup>7</sup> Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

1) Specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or 2) The withholding of information by the local educational agency from the parent that was required to be provided to the parent under special education law. (*Ibid.*, see 20 U.S.C. § 1415(f)(3)(D).) Common law or equitable exceptions to the statute of limitations do not apply to IDEA cases. (*P.P. ex rel. Michael P. v. West Chester Area School Dist.* (E.D. Pa. 2008) 557 F.Supp.2d 648, 661-662.) A claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action, i.e., when the parent knows that the education provided is inadequate. (*MD. v. Southington Board of Ed.* (2nd Cir. 2003) 334 F.3d 217, 221.) In other words, the statute of limitations begins to run when a party is aware of the facts that would support a legal claim, not when a party learns that it has a legal claim. (*See El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039.)

## DISCUSSION

### *Sufficiency of the Amended Complaint*

The amended complaint raises three claims. Issue One alleges that District had knowledge of Student's disruptive and inappropriate behavior and failed to take action to assess Student and provide a program and services to address the behavior. Issue One asserts that by its inaction District denied Student a FAPE by failing in its Child Find obligations from January 12, 2008 to the present. Issue Two alleges that from June 2008 through June 2010 and in the present school year District failed to assess Student in all areas of suspected disability by failing to perform a Functional Analysis Assessment (FAA), a Neuropsychological Assessment, a Social Behavioral Assessment, and a Functional Behavioral Assessment (FBA). Issue Three alleges District denied Student a FAPE from January 2008 to the present by failing to design and implement a Behavioral Intervention Plan (BIP) and/or a Behavior Support Plan (BSP) and by failing to offer school-based counseling, AB3632 assessment, a one-to-one aide and a non public school placement. The amended complaint also contains proposed resolutions for each of the claims in the complaint.

The amended complaint also requests an expedited hearing and raises the following claim. Student is pending expulsion from school. The amended complaint alleges that parents request an expedited hearing because Student has had a change of placement for disciplinary reasons and parents assert that Student's behavior is a manifestation of her disability. The amended complaint further alleges that Student has not been determined to be eligible for special education and services however, Student had multiple incidents of misbehavior and disciplinary action by teachers and District has had notice and knowledge of Student's disability.

The facts alleged in the amended complaint are sufficient to put District on notice of the issues forming the basis of the amended complaint. The amended complaint identifies the issues and adequate related facts about the problem and provides an awareness and

understanding of the issues forming the basis of the complaint. The amended complaint is also sufficient to warrant Student's request for an expedited hearing.

*Statute of Limitations*

The amended complaint raises FAPE claims from June 2008 to the present, which is more than two years from the date parent knew or had reason to know of the facts underlying the basis for the request. The amended complaint does not allege facts that parent was prevented from requesting the due process hearing due to either specific misrepresentations by District that it had solved the problem forming the basis of the due process hearing request; or that District withheld information from the parent that was required to be provided to the parent under special education law. Because the amended complaint fails to allege facts supporting a waiver of the statute of limitations Student's claims prior to January 6, 2009 are barred by the statute of limitations. Accordingly, the motion to dismiss those claims is granted.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. District's motion to deny the request for an expedited hearing is denied.
3. District's motion to dismiss all claims alleged prior to January 6, 2009 in the amended complaint is granted and those claims are barred by the statute of limitations.
4. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: January 25, 2011

/s/

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STELLA OWENS-MURRELL  
Administrative Law Judge  
Office of Administrative Hearings